Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

AMP Group Submission

Counsel Assisting's Policy and General Questions in Closing Submissions for Round 6

25 October 2018

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OVERVIEW

1. AMP welcomes the opportunity to provide a written submission in response to the policy and general questions that Counsel Assisting raised in the closing submissions for Module 6: Insurance.
2. AMP has supported the many substantial reforms to the life insurance regulatory regime over recent years including the introduction of the Life Insurance Framework (**LIF**) and the Financial Services Council (**FSC**) Life Insurance Code of Practice (**LICOP**).
3. We are committed to working with the government, regulators and the industry on further reforms to improve customer outcomes and increase transparency.
4. AMP acknowledges that there have been several important issues raised during the insurance hearings of the Royal Commission and we agree that improvements should be made across the industry.
5. There are three principles which underpin AMP's response to the policy and general questions. These are:
    a. improving customer outcomes;
    b. providing affordable cover to as many Australians as possible on a sustainable basis; and
    c. ensuring customers' best interests are met.
6. AMP strongly believes in the value of life insurance and the social benefit it provides. In order to provide affordable cover to as many Australians as possible, AMP considers it essential that the availability of automatic Group insurance through superannuation is preserved. Opt-out Group insurance provides valuable coverage to customers who otherwise may not be able to afford life insurance or, due to existing health concerns, would not have been offered cover had they been medically underwritten.
7. When designing Group insurance policies, insurers must balance the need to provide sufficient coverage for the customers that will claim, with the need to ensure affordability and

sustainability of premium rates for the entire pool of customers. For example, as Group insurance is issued without medical underwriting, in order to maintain affordable premium rates, insurers may need to impose limits on the cover, or not issue cover, where the customer is already unable to work due to an illness or injury. Further, Group insurance needs to be issued on an opt-out basis to ensure a balance of risks in the pool of customers that enables affordability and sustainability.

8. AMP notes and agrees with Commissioner Hayne's views outlined in the Interim Report that 'no new layer of law or regulation should be added unless there is clearly identified advantage to be gained by doing that'.[1]

9. The key question arising from the Insurance Round of the Royal Commission is how customer outcomes can be improved with limited or no additional legislation or regulation.

RESPONSE TO QUESTIONS

General

Question 1

Is the current regulatory regime adequate to minimise consumer detriment? If the current regulatory regime is not adequate to achieve that purpose, what should be changed?

AMP Response

10. AMP considers that, overall, the regulatory regime is adequate. We note, however, that several significant reforms have only recently been implemented – such as the LIF and LICOP – and these reforms need more time for their full benefits to be fully achieved. Given some of the issues raised in Module 6 of the Royal Commission, AMP also believes there is scope for additional amendments in specific areas to build upon the regulatory regime that is already in place.

11. For many years, AMP has called for the government to establish an expert panel or taskforce to examine the *Life Insurance Act* 1995 (Cth) (**Life Insurance Act**) and the *Insurance Contracts Act* 1984 (Cth) (**Insurance Contracts Act**). This would include a review of key legislation, which would examine the current environment and how the industry has evolved in response to the governing legislation.

12. The Commonwealth Government has already conducted several recent reviews into life insurance and the financial services system more generally. Key reforms have already been implemented, most arising from recommendations of the Final Report of the Financial

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[1] Interim Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, p 339

System Inquiry (**FSI**). The recommendations focussed on improving the regulatory regime, rather than embarking on wholesale reform.

13. The Final Report stated:

> *The Inquiry's recommendations to improve consumer outcomes aim to:*
>
> - *Improve the design and distribution of financial products through strengthening product issuer and distributor accountability, and through implementing a new temporary product intervention power for the Australian Securities and Investments Commission (ASIC).*
> - *Further align the interests of firms and consumers, and improve standards of financial advice, by lifting competency and increasing transparency regarding financial advice.*
> - *Empower consumers by encouraging industry to harness technology and develop more innovative and useful forms of disclosure.*
>
> *These recommendations seek to strengthen the current framework to promote consumer trust in the system and fair treatment of consumers.*

14. The Commonwealth Government agreed to accept and implement these recommendations and AMP supported these reforms. Accordingly, the Government has either enacted these reforms or is in the process of doing so.

15. One important measure is the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018, which is currently before the Senate. This reform underpins the notion that disclosure (which was the focus of the *Financial Services Reform* Act 2001 (Cth)) is not the only policy principle that the regulatory framework relies upon. The proposed new design and distribution obligations represent a partial wind-back of reliance on disclosure as financial manufacturers and distributors will have explicit obligations to design and distribute products that are suitable for the target markets.

16. This important reform, combined with new ASIC powers to remove harmful products from the market and supplemented by other policy principles such as prohibitions on misleading and deceptive conduct, will place more responsibility on financial services providers to minimise consumer detriment, rather than simply relying on a disclosure regime. AMP believes that the proposed design and distribution obligations are important reforms and should be given time to work before assessing whether more wide-ranging change is required.

A. Product design

Question 2

Are there particular products – like accidental death and accidental injury products – which should not be sold?

AMP Response

17. While noting that AMP does not offer accidental death and accidental injury products, we believe that there should be no ban on these kinds of products – provided they meet consumer needs and there is no detriment to consumers.

18. In this respect, it is important to recognise that the Commonwealth Government is already taking steps to better protect consumers by requiring product manufacturers to reasonably ensure that products meet the needs of customers in the target market through the proposed design and distribution obligations legislation (see paragraph 12 above). This, along with ASIC's proposed product intervention power, should provide confidence that products that provide little or no value, or do not meet the needs and expectations of customers, are not taken to market.

Question 3

Should the requirements of the Life Insurance Code of Practice in relation to updating medical definitions be extended to products other than on-sale products?

AMP Response

19. AMP supports in-principle extending the requirements of the LICOP regarding updating medical definitions to products other than on-sale products. However, in our view, legislative amendment is necessary to make this a requirement of the LICOP.

20. AMP already completes a review of off-sale medical definitions as part of our annual review process. We review off-sale definitions to ensure that they are consistent with current medical standards and update those definitions where we do not believe that a corresponding premium rate increase is required. Given current regulatory constraints, AMP Life cannot impact off-sale benefits unless there is no increase in expected cost that would prospectively impact on a customers' premium – otherwise, this would be a unilateral change to the contract.

21. An obligation to change definitions in a manner that exposes an insurer to greater risk and cost of claims, without a corresponding right to increase premiums or alter other terms, would risk the financial viability of the insurance sector and its willingness to insure on current terms – thereby reducing the availability of economic product to Australians.

B. Disclosure

Question 4

Is the current disclosure regime for financial products set out in Chapter 7 of the Corporations Act 2001 (Cth) and Division 4 of Part IV of the Insurance Contracts Act 1984 (Cth) adequately serving the interests of consumers? If not, why not, and how should it be changed? In answering these questions, address the following matters:

> *4.1 the purpose(s) that the product disclosure regime should serve;*
>
> *4.2 whether the current regime meets that purpose or those purposes; and*
>
> *4.3 how financial services entities could disclose information about financial products in a way that better serves the interests of consumers.*

(Despite the reference to the Insurance Contracts Act 1984 (Cth), this question is not limited in scope to contracts of insurance.)

AMP Response

22. AMP notes that Division 4 of Part IV of the Insurance Contracts Act applies to specific general insurance contracts that are not offered by AMP. Nevertheless, we understand the Commission is seeking views on the effectiveness of key fact sheets more generally.

23. The consideration of shorter disclosure documents, including key fact sheets and shorter product disclosure statements (**PDS**) has been the subject of major debates between policy makers and industry for decades.

24. AMP also notes that life insurance terms and conditions are often more complex than general insurance. In these circumstances, it is difficult to reduce disclosure of key terms and conditions to, say, a one-page key fact sheet.

25. We consider that the policy objective of ensuring that customers understand the products they are acquiring through disclosure has not been fully achieved, and as such AMP is open to considering again whether there is a better way to engage customers with their financial services products, including through improved disclosure documents.

26. Industry has worked hard to engage our customers with the financial services products they acquire, beyond relying on disclosure documents. We believe that more customers have become engaged with their superannuation, insurance and other products over the past decade. There is a general shift in public awareness and an increasing realisation that financial decisions are important, and customers would benefit from increasing their engagement with them.

27. Many financial services providers, including AMP, are attempting to harness developments in technology to assist in engaging consumers in new and innovative ways. These also have the capability to build in 'regtech' solutions within the technological platform.

28. AMP believes that it is important that the law does not prevent the development and implementation of these innovative solutions.

29. How government can encourage Australians to be more financially literate is an important consideration for society.

Question 5

Is the standard cover regime in Division 1 of Part V of the Insurance Contracts Act 1984 (Cth) achieving its purpose? If not, why not, and how should it be changed?

AMP Response

30. AMP notes that the standard cover regime requires insurers to disclose 'unusual terms' of contracts prior to commencement. We believe that more needs to be done to facilitate customer understanding of general terms of insurance policies, not only unusual terms. As noted above, AMP is always looking at ways to better engage with our customers to help improve their understanding of the products they are acquiring.

Question 6

Is there scope for insurers to make greater use of standardised definitions of key terms in insurance contracts?

AMP Response

31. AMP supports further discussion on whether any key terms could be standardised in insurance contracts, without impacting competition and innovation. We believe that there may be scope to consider minimal key terms in a similar fashion to medical definitions in the LICOP.

32. Industry would need to carefully assess whether this would be useful to consumers, in addition to understanding any impacts on competition. Standard definitions may mean that some customers are unable to secure insurance terms as the risk is unable to be affordably priced. As such, the standardisation of even minimal terms may have significant consequences for insurance accessibility.

C. Sales

Question 8

Should monetary benefits given in relation to life risk insurance products remain exempt from the ban on conflicted remuneration in Division 4 of Part 7.7A of the Corporations Act 2001 (Cth)? Why shouldn't the cap on such benefits continue to reduce to zero?

AMP Response

33. AMP supports a move away from a commission-based sales regime for life insurance to a fee for service model. This position was set out in our press release of 29 April 2015. The press release noted that reforms should be a first step towards a fee for service model.

34. AMP supported the LIF reforms, which removed the life insurance exemption from the conflicted remuneration provisions of the original Future of Financial Advice (**FOFA**) package of legislation. The only permitted conflicted remuneration arrangements for new insurance sales are commissions within the specified caps. These caps were a compromise introduced by the Commonwealth Government and are designed to reduce over a transition period (currently legislated for three years).

35. AMP also notes that the LIF reforms only came into effect on 1 January 2018 and need time for their full benefits to be achieved. ASIC has been asked to conduct a post-implementation review in 2021 to assess the impact of the reforms.

36. Under LIF, commissions and other arrangements commencing prior to 1 January 2018 were grandfathered. AMP has previously submitted that it is important to recognise that there may be constitutional issues associated with banning grandfathered commissions.

37. In reviewing the current framework, it would be useful to look at the experience of other nations around the world, and in particular the Netherlands, to determine whether there are any lessons for Australia. However, it needs to be recognised that this experience may not be directly transferrable to Australia given that the Dutch legislative framework is different to that in Australia. In the Netherlands, the insurance market is driven by the mortgage market; lenders require a life policy to be in place and assigned before they release mortgage funds.

38. At the start of 2013, the Netherlands effected a ban on all commissions for financial services products (including life insurance), although advisers had been aware of the proposed ban since 2011. The two-year transition enabled advisers to make new arrangements and they began focussing more on the customer and less on the product.

39. Following this reform, it was found that a strong demarcation between the adviser and the product manufacturer developed, with customers no longer seeing advisers as an extension of the life insurer. The new arrangements resulted in consolidation in the financial planning

sector, with a fall in the number of advice companies, but about the same number of advisers overall.

40. A modification of the Dutch model, which may have relevance in Australia as a transition from LIF to a fee for service regime (and which could have applicability to all financial products), could involve:

    a. where a product is 'sold' rather than 'bought', a customer payment and advice 'co-payment' paid to the adviser by the product manufacturer. In these circumstances the co-payment should be less than the customer payment and be transparent to the customer;

    b. a minimum statutory fee for the advice service to minimise the scope for cross-subsidisation;

    c. where a product is one that is typically 'bought' (eg a mortgage product would be 'bought' as it is sought out by consumers), a minimum fee payable by the purchaser, with no or a small co-contribution.

Question 9

Is banning conflicted remuneration sufficient to ensure that sales representatives do not use inappropriate sales tactics when selling financial products? Are other changes, such as further restrictions on remuneration or incentive structures, necessary?

AMP Response

41. As noted above (see response to Question 8), AMP supported the LIF reforms as a first step in improving the distribution of life insurance products, and the introduction of a fee for service model.

42. We believe there is scope to improve the current framework, however any further reform should be coupled with appropriate risk management and culture changes, together with robust training, monitoring, supervision and audit processes of sales representatives.

Question 10

Should the direct sales of insurance via outbound telephone calls be banned? If not, is the current regulatory regime governing the direct sale of insurance via outbound telephone calls adequate to avoid consumer detriment? If the current regulatory regime is inadequate, what should be changed?

AMP Response

43. AMP does not engage in direct sales of insurance via outbound calls and does not intend to do so. Despite this, we do not believe that direct sales of insurance via outbound telephone calls should be banned.

44. AMP is of the view that compliance with the current regulatory framework, including anti-hawking provisions should prevent pressure or other mis-selling of insurance products. It should be noted that sales through all channels are also subject to consumer protection requirements, including the prohibitions on unconscionable conduct and misleading and deceptive conduct. Furthermore, the proposed design and distribution obligations will require manufacturers to consider whether the distribution arrangements for their products are appropriate.

45. If reforms were to be considered, it is important that inbound calls are not unintentionally captured or impacted. In this regard, we believe customers should have the ability to access channels of their choice, for example, through a direct channel where the customer does not wish to obtain personal financial advice.

Question 11

Is Recommendation 10.2 from the Productivity Commission's report on "Competition in the Australian Financial System", published in June 2018, sufficient to address the problems that can arise where financial products are sold under a general advice model (for example, the sale of financial products to consumers for whom those products are not appropriate)? If not, what additional changes are required? Are there some financial products that should only be sold with personal advice?

AMP Response

46. AMP supports the Productivity Commission's recent recommendation in its report on Competition in the Australian Financial System to rename 'General Advice' to improve consumer understanding. This includes the removal of the term 'advice' from 'General Advice', so as not to associate or confuse it with 'Personal Advice', which considers a person's individual objectives, financial situation and needs.

47. While at this stage, the final form of the revised terminology is yet to be determined, AMP supports consumer testing of alternative terminology to replace the term 'General Advice'. This recommendation is consistent with the recommendation contained in the Final Report of the FSI.

48. AMP also supports strengthening general advice frameworks across the industry and aligning these improvements with the recommendations in ASIC's recently released Report 587 – The Sale of Direct Life Insurance.

49. AMP is not supportive of changes to the obligations (licensing and regulatory) that are associated with providing general advice. We believe that financial product issuers and advice licensees (including authorised representatives) should continue to be able to provide general advice. Any change to the obligations associated with providing general advice would require consultation with the industry.

50. Although AMP chooses to limit the distribution of certain products to specific channels due to the complexity of those products, AMP does not believe there are any broad types of products (for example, Income Protection insurance) that should only be sold with personal advice and believes that choice of channel should be available.

51. A restriction on channels by product would reduce innovation and would be better addressed by improving disclosure and customer understanding, while simplifying the products that are sold without personal advice.

52. Again, we note that the proposed design and distribution obligations will require product manufacturers to assess product design distribution channels to ensure that consumers are provided with appropriate products that meet their needs.

Question 12

Should all financial services entities that maintain an approved product list be required to comply with the obligations contained in FSC Standard No 24: Life Insurance Approved Product List Policy?

AMP Response

53. AMP supports a requirement for all financial services entities' approved product lists (**APLs**) to comply with the FSC's Standard No 24 in relation to life insurance products. This includes insurers who are not members of the FSC (provisions exist for non-members to sign up to FSC standards).

54. It should be noted that AMP's advice licensee APLs have a broad representation of insurance providers, with six providers on the AMPFP APL and eight providers on the Charter and Hillross APL. This is above the minimum requirements of FSC Standard 24 and is subject to a robust research and authorisation processes.

D. Add-on Insurance (Questions 13 – 16)

55. AMP does not have a position on the following matters.

Question 13

Should the sale of add-on insurance by motor dealers be prohibited?

Question 14

Alternatively, should add-on insurance only be sold via a deferred sales model? If so, what should be the features of that model?

Question 15

Would a deferred sales model also be appropriate for any other forms of insurance? If so, which forms?

Question 16

If the ban on conflicted remuneration is not extended to apply to general insurance products, should the payment of commissions for the sale of add-on insurance by motor dealers be limited or prohibited?

E. Claims handling

Questions 17 and 18

Should the obligations in section 912A of the Corporations Act 2001 (Cth) apply to all aspects of the provision of insurance, including the handling and settlement of insurance claims?

Should ASIC have jurisdiction in respect of the handling and settlement of insurance claims?

AMP Response

56. AMP believes that throughout the claims handling process, the requirements of utmost good faith and other obligations under the Insurance Contracts Act are sufficient and broadly consistent with a financial services licensee being as efficient as possible, honest and fair. An extension of section 912A of the *Corporations Act* 2001 (Cth) (**Corporations Act**) to cover the handling of insurance claims would be a double layer of obligation and this would cause unnecessary duplication and confusion.

57. The LICOP requires insurers to be honest, fair, respectful, transparent and timely. It also specifies many obligations relating to claims-handling such as claims assessment timelines and restrictions on surveillance. We support an extension of the LICOP to cover superannuation trustees. We also support having adequate arrangements in place for the management of conflicts of interest.

58. AMP does not support the extension of section 912A of the Corporations Act to the handling of insurance claims and believes careful consideration must be given to ensuring there are no unintended consequences. For example, applying increased educational standards relating to the provision of advice to claims assessors and incident reporting and breach assessment would likely lead to adverse outcomes such as an increase in claims costs, which would ultimately be borne by policy holders. In additional to the duty of utmost good faith, there are also relevant provisions and interactions with other requirements in the Life Insurance Act and the Insurance Contracts Act (such as disclosure obligations and protections for both insureds and insurers) that must be considered.

59. AMP does not support ASIC having jurisdiction in respect of any external dispute resolution scheme, as it would be a major change in the roles played in dispute resolution across the financial services industry and has potential to give rise to conflicting obligations.

Question 19

Should life insurers be prevented from denying claims based on the existence of a pre-existing condition that is unrelated to the condition that is the basis for the claim?

AMP Response

60. AMP believes there is value in having a discussion in this area as there has been some confusing rhetoric, as revealed recently in the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the Life Insurance Industry (**PJC Inquiry**).

61. AMP supports the Supplementary Submission of the FSC to the PJC Inquiry responding to questions about the denial of claims due to non-disclosure of issues unrelated to the claim.[2] We particularly emphasise the FSC's general point that 'It is in the interests of all policyholders, the vast majority of whom disclose appropriately, for insurers to pursue non-disclosure provided that the relatively high standards, of materiality and customer awareness that they were non-disclosing, are met.'[3]

62. We also agree with the FSC that 'The Duty of Disclosure' is an extremely important instrument for underwritten life insurance sustainability. If non-disclosure were to be permitted when the claim is for an unrelated condition, this would create an incentive to non-disclose and would serve to undermine a key principle on which an insurance contract is formed and executed: a bilateral duty of utmost good faith between the insurer and the insured.

63. Section 29 of the Insurance Contracts Act attempts to balance the rights of customers and insurers against the background of the requirements for both parties to the contract to act in utmost good faith. The primary purpose of section 29 is not about allowing an insurer to deny a claim, it is about permitting an insurer, upon becoming aware of a non-disclosure or misrepresentation at the time the policy was taken out, to put itself (and the customer) in the position it would have been in had it known the relevant details of the insured person's pre-application history. This may include varying the terms of the contract or avoiding it altogether.

64. While we note that the ability to remedy an insurer's contractual obligations due to non-disclosure is separate to a decision to approve or deny a claim, we appreciate that the two often (but not necessarily) arise during a claim. There will be circumstances where a claim (or rather contract) will not be affected by the non-disclosure of an unrelated condition. This may be because the unrelated condition was immaterial and would not have affected the

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[2] See FSC Supplementary Submission to the Parliamentary Joint Committee on Corporations and Financial Services - Inquiry into the Life Insurance Industry, dated 26 May 2017, pages 8-10.

[3] Ibid

terms offered if full disclosure had been made. The claim may also not be affected if the insurer would have imposed an exclusion for the unrelated condition.

65. In circumstances where there has been a non-disclosure which is significant enough that the insurer would not have offered cover that responded to the claim now being made, it is fair and reasonable for the insurer to avoid the cover and, therefore, deny that claim.

66. As life insurance is guaranteed renewable, the duty to disclose is an important balancing tool to permit insurers to make decisions about whether to assume appropriate risk and act fairly to all insureds in the risk pool.

67. Non-disclosure of issues apparently unrelated to a claim affects an insurer's ability to accurately price risk. This may impact upon the affordability of insurance for consumers.

68. AMP notes that the draft second iteration of the LICOP, currently under development by the FSC, proposes to make it clear that insurers will aim to ensure that customers will be no better or worse off than other customers who fulfilled their duty of disclosure in the same circumstances.

69. AMP considers that the duty of disclosure is clearly articulated in the application for insurance. We also note that there are consumer protections whilst non-disclosure investigations are undertaken, including the LICOP.

70. In addition, in October 2017, AMP introduced the Customer Advocate, whose role is to ensure customers' best interests are being met, particularly where a complaint has been made. This provides an additional layer of protection for our customers.

Question 20

Should life insurers who seek out medical information for claims handling purposes be required to limit that information to information that is relevant to the claimed condition?

AMP Response

71. AMP supports in-principle a requirement on life insurers to limit access to medical information for claims-handling purposes to information relevant to the claimed condition. However, it is important to emphasise that there are instances where insurers need to obtain medical histories to confirm customer disclosures at application and/or identify non-disclosures. Limiting medical histories to only the medical condition being claimed may have a material impact on an insurer's ability to apply remedies under the Insurance Contracts Act to customers due to increasing premiums, as explained in our response to Question 19.

72. AMP acknowledges the sensitive nature of medical records and respects every customer's right to privacy. We are committed to only requesting medical information relevant to the

customer's claim or policy and medical records that only relate to periods relevant to the claim or policy.

73. AMP supports industry discussions being held with the Royal Australian College of General Practitioners (**RACGP**) on this issue and believes it is important that customers understand what we are asking for and the reasons for the request.

Question 21

Should life insurers be prevented from engaging in surveillance of an insured who has a diagnosed mental health condition or who is making a claim based on a mental health condition? If not, are the current regulatory requirements sufficient to ensure that surveillance is only used appropriately and in circumstances where the surveillance will not cause harm to the insured? If the current regulatory requirements are not sufficient, what should be changed?

AMP Response

74. AMP does not support a prohibition on the use of surveillance for individuals who have a diagnosed mental health condition or who are making a claim based on a mental health condition. We consider that surveillance should be used ethically and rarely.

75. AMP only uses surveillance as a last resort to assist when all other avenues to verify inconsistencies have been exhausted, but it is an important tool to have available.

76. There are limited other tools to identify fraudulent or inaccurate claims. Surveillance is important in neutralising to a degree the information asymmetry between claimant and insurer. There are legitimate circumstances where insurers need to verify the information provided, relating to both physical and mental conditions.

77. For claims relating to the period from 1 July 2016 – 30 June 2018, we have undertaken only one case of surveillance where the claim related to a mental health condition. There have been relatively few cases of surveillance undertaken in previous years. We engage operators who adopt high professional standards.

78. AMP has also introduced mental health training, which was developed in conjunction with Black Dog Institute, for claims-handling employees. This formed the basis of the FSC Standard No. 21 Mental Health Education Program and Training for claims-handling employees. A revised version, again developed in conjunction with Black Dog, was released to all AMP staff in 2017. It is mandatory for AMP claims-handling employees and employees supporting insurance customers and is highly recommended for all other employees and financial advisers.

F. Insurance in superannuation

Question 23

Should universal:

23.1 minimum coverage requirements; and/or

23.2 key definitions;

and/or

23.3 key exclusions,

be prescribed for group life policies offered to MySuper members?

AMP Response

79. There are minimum coverage requirements for MySuper – subject to reasonable conditions that an RSE Licensee can impose.

80. As noted at paragraph 31 there may be scope to expand on minimum key definitions, subject to an analysis of potential impacts on an RSE Licensee's membership, competition and innovation.

81. Exclusions and policy terms and conditions should be disclosed clearly. AMP does not support universal exclusions as each group life policy is developed based on the demographics of the membership.

Question 24

Should group life insurance policies offered to MySuper members be permitted to use a definition of "total and permanent incapacity" that derogates from the definition of "permanent incapacity" contained in regulation 1.03C of the Superannuation Industry (Supervision) Regulations 1994 (Cth)?

AMP Response

82. AMP does not support a requirement to align insurance definitions to the 'permanent incapacity' definition in the Superannuation Industry (Supervision) Regulations 1994 (Cth) (**SIS Regulations**). The definition of 'permanent incapacity' in 1.03C of the SIS Regulations is the legislated test for early access to superannuation. This is very different to the specific terms and definitions set out in the insurance policy that is provided through a superannuation fund.

83. Superannuation benefits are accrued funds which have been invested by the member, whereas insurance policies are intended to cover the risk of an insured event occurring on an individual who is part of a wider pool. Given insurance risk is effectively funded by a pool

of customers and is not simply an amount to be drawn upon, the requirements to claim an insurance benefit may be set higher than those applying to a superannuation withdrawal.

84. Insurers must be able to set parameters on the risk they are willing to accept to sustainably manage premium rates. Moving insurance policy terms to match the conditions of early release of superannuation will lead to an increase in claims and therefore an increase in insurance premiums. This should be weighed against the benefits and the purpose of the coverage.

Question 25

Should RSE Licensees be obliged to ensure that their members are defaulted to statistically appropriate rates for insurance required to be offered through the fund under section 68AA(1) of the Superannuation Industry (Supervision) Act 1993 (Cth)?

AMP Response

85. RSE Licensees should be required to ensure that premium rates are appropriate and fair for their members. This should consider market position, affordability, product design and sustainability in accordance with SPS 250 requirements. The RSE Licensee should also understand the nature of the rates being offered (for example, whether these vary by age, gender, occupation or smoking status). RSE Licensees should not be required to assess the detailed statistical factors that have been used to determine premium rates. That is the responsibility of the insurer.

86. It is important to note that an RSE's Insurance Strategy does not limit the decision to offer insured benefits to consideration of cost. An insurer will consider the demographics of the membership as well as the experience of the pool in determining premium rates. The RSE should have broad oversight of this process to satisfy its obligations under the sections 52(7)(b) and (c) of the *Superannuation Industry (Supervision) Act* 1993 (Cth).

Questions 26 and 27

Should RSE Licensees be prohibited from engaging an associated entity as the fund's group life insurer?

Alternatively, should RSE Licensees who engage an associated entity as the fund's group life insurer be subject to additional requirements to demonstrate that the engagement of the group life insurer is in the best interests of beneficiaries and otherwise satisfies legal and regulatory requirements,

including the requirements set out in paragraphs 22 to 24 of Prudential Standard SPS 250, Insurance in Superannuation?

AMP Response

87. AMP believes that there should be no prohibition on an RSE preventing them from engaging an associated entity as the fund's group life insurer. RSE Licensee obligations as specified in SPS 250 apply equally to associated and external insurers. AMP recognises that engaging an associated entity as the fund's group life insurer may create potential conflicts. However, we believe any potential conflicts can be, and are, appropriately managed in accordance with the law through the application of the RSE Licensee's conflicts management framework to favour the duties to, and interests of, the beneficiaries of the relevant fund over the duties owed to, and the interests of, other persons (including the interests of AMP).

88. AMP Life is a significant provider of services to our RSE licensees. However, other competing insurance companies also provide insurance for significant superannuation plans.

89. AMP also notes that the Australian insurance market is becoming increasingly concentrated and may continue to do so. We do not believe that it is in best interests of members to exclude the contemplation of a significant provider of insurance from the trustee's consideration of an appropriate insurance provider. It is important to recognise in the context of this question that AMP does not support structural change of entities, mandated by legislation or otherwise. Vertically integrated companies such as AMP can and do provide significant consumer benefits.

G. Scope of the Insurance Contracts Act 1984 (Cth)

Question 28

Are the terms set out in the Insurance in Superannuation Voluntary Code of Practice sufficient to protect the interests of fund members? If not, what additional protections are necessary?

AMP Response

90. AMP believes that the Insurance in Superannuation Voluntary Code of Practice supports and protects the interests of fund members. However, we are of the view that it is in the consumer interest for there to be a single code of practice and we support the LICOP as this one code. One code would be simpler for consumers and would ensure a consistent experience and outcome for all customers and members, whether their insurance is held within or outside superannuation.

91. AMP also believes that the LICOP provides protections to members above the requirements set out in the relevant provisions of the Life Insurance Act, the Insurance Contracts Act and the Corporations Act. We support setting higher industry standards than those contained in

the ‘formal’ legal framework through ‘co-regulatory codes’ where the provisions are reportable to, and enforceable by, an independent external committee.

Question 29

Is there any reason why unfair contract terms protections should not be applied to insurance contracts in the manner proposed in “Extending Unfair Contract Terms Protections to Insurance Contracts”, published by the Australian Government in June 2018?

AMP Response

92. AMP supports in-principle the extension of unfair contract terms protections to contracts of insurance. We note the Commonwealth Government has recently undertaken consultation on a proposed model.

93. AMP is of the view that the proposed model must ensure that the provisions are modified to consider the unique provisions of life insurance contracts, including that they are of a long-term nature. As such, insurers must be able to set the parameters on risk they are willing to accept and must be able to change premium rates as needed over time. We agree with the view expressed by Treasury in its Proposals Paper that unfair contract term laws in the *Australian Securities and Investments Commission Act* 2001 (Cth) must be tailored to accommodate specific features of insurance contracts.[4]

Question 30

Does the duty of utmost good faith in section 13 of the Insurance Contracts Act 1984 (Cth) apply to the way that an insurer interacts with an external dispute resolution body in relation to a dispute arising under a contract of insurance? Should it?

AMP Response

94. AMP does not believe that the duty of good faith applies to interactions between insurers and external dispute resolution bodies (**EDRs**). In our view, the duty of utmost good faith solely applies to insurers and applicants/insureds as well as to third party beneficiaries.

95. AMP is of the view that there are other contractual provisions that should ensure transparency and cooperation between insurers and EDRs. If these are deficient, we do not consider that section 13 of the Insurance Contracts Act is the appropriate remedy. If this is the case, AMP would support exploring alternative reforms to ensure that there is openness and transparency between insurers and EDRs.

[4] Extending Unfair Contract Terms Protections to Insurance Contracts, Proposals Paper - June 2018, The Treasury, p 1

Question 31

Have the 2013 amendments to section 29 of the Insurance Contracts Act 1984 (Cth) resulted in an "avoidance" regime that is unfairly weighted in favour of insurers? If so, what reform is needed?

AMP Response

96. As stated in our response to Question 19, AMP believes that section 29 of the Insurance Contracts Act attempts to balance the rights of customers and insurers against the background of the requirements for both parties to the contract to act in utmost good faith. The primary purpose of section 29 is not about allowing an insurer to deny a claim. It is about permitting an insurer, upon becoming aware of a non-disclosure or misrepresentation at the time the policy was taken out, to put itself (and the customer) in the position it would have been had it known the relevant details of the insured person's pre-application history. This may include varying the terms of the contract or avoiding it altogether (ie cancelling the contract from inception with refund of premiums).

97. Furthermore, AMP is of the view that section 29 balances providing that protection and not unfairly penalising an insured for non-disclosure. The provision only permits avoidance for innocent non-disclosure within three years of the commencement of the contract if the insurer would not have provided insurance on the same terms if disclosure had been made. The insurer cannot avoid the contract based on innocent non-disclosure after three years. After this time, the insurer must prove that a non-disclosure or misrepresentation was fraudulent. This test is weighted in favour of the insured person. The 2013 amendments also provide additional weight towards an insured because they permit an insurer to vary a policy rather than avoid it completely.

H. Regulation

Question 32

Does the duty of disclosure in section 21 of the Insurance Contracts Act 1984 (Cth) continue to serve an important purpose? If so, what is that purpose? Would the purpose be better served by a duty to take reasonable care not to make a misrepresentation to an insurer, as has been introduced in the United Kingdom by section 2 of the Consumer Insurance (Disclosure and Representations) Act 2012 (UK)?

AMP Response

98. AMP believes that section 21 of the Insurance Contracts Act serves an important purpose. As noted in our response to Question 31, AMP believes that this section attempts to balance the rights of customers and insurers against the background of the requirements for both parties to the contract to act in utmost good faith.

99. As life insurance is guaranteed renewable, applicants must have an obligation to disclose relevant information to assist in the assessment of risk within a pool. The duty of disclosure in section 21 in principle continues to serve an important purpose for insurers (and other policy holders) in mitigating the risks of non-disclosure, misrepresentation and fraud.

100. AMP has not considered the duty to take reasonable care not to make a misrepresentation to an insurer, as introduced in the United Kingdom by section 2 of the *Consumer Insurance (Disclosure and Representations) Act* 2012 (UK). We note that changes to the laws governing insurance contracts in the UK, including the duty contained in section 2, followed a three-year inquiry by the English and Scottish Law Commissions. Given the potentially significant implications of adopting a duty similar to that in the UK, AMP does not propose to comment on this area of law reform without proper consideration of the UK legislation.

Question 33

Should the Life Insurance Code of Practice and the General Insurance Code of Practice apply to all insurers in respect of the relevant categories of business?

AMP Response

101. AMP has responded to this question in respect of the LICOP only. AMP considers that all life insurers should commit to the LICOP, irrespective of whether they are members of the FSC. The LICOP envisages non-FSC members agreeing to be bound by the code.

Question 34

Should a failure to comply with the General Insurance Code of Practice or the Life Insurance Code of Practice constitute:

34.1 a failure to comply with financial services laws (for the purpose of section 912A of the Corporations Act 2001 (Cth));

34.2 a failure to comply with an Act (for example, the Corporations Act 2001 (Cth) or the Insurance Contracts Act 1984 (Cth))?

AMP Response

102. AMP notes that the LICOP was not designed to be incorporated into insurance contracts. We would need to review whether it would be appropriate to do so.

103. The LICOP is enforceable through the Life Code Compliance Committee (**LCCC**). Breaches must be reported to the LCCC, which has a range of enforcement tools including requiring remediation and imposing sanctions.

104. Where a breach of the LICOP is also a breach of relevant legislation, it is reported to both the LCCC and the regulator. The LICOP and LCCC are new features of the overall regulatory

framework for life insurance. We should give the LICOP and the Compliance Committee more time to work before assessing their effectiveness. The LCCC acknowledged that it would expect industry to take a period of time to transition to the LICOP requirements.

105. We note that the FSC's intention is to seek ASIC approval of a future iteration of the LICOP. The industry believes there are benefits and potential downsides in this approach and would need to discuss these with ASIC and government. For example, there may not be a willingness to commit to 'target' dates (that are expected to be met in most cases) in a code if this would become a strict legal requirement. The LICOP is also intended to be a customer facing document and there is a possibility it may become overly complex to meet the conditions of ASIC's approval. AMP would be pleased to work constructively with ASIC on these issues.

106. The LICOP can be changed more quickly and can have a role in leading the industry and encouraging best practice and reform, without the constraints of passing formal legislation. As noted at Question 3, we consider the ability to achieve minimum standard medical definitions is a clear example of the advantages of using a code to achieve considerable change in the industry much faster than through a legislative route.

I. Compliance and breach reporting

Question 36

Is there sufficient external oversight of the adequacy of the compliance systems of financial services entities? Should ASIC and APRA do more to ensure that financial services entities have adequate compliance systems? What should they do?

AMP Response

107. AMP believes that the current system of regulatory oversight is adequate. However, as the financial services regulators have acknowledged themselves, more can be done to improve the oversight and compliance of financial services entities.

108. The case studies before the Royal Commission have highlighted a need for improved oversight of the adequacy of compliance systems by senior management and boards of financial services entities. We note that ASIC and APRA hold regular meetings with financial services entities' risk and compliance functions as well as the relevant boards and senior management. Entities have often agreed with the regulators for external advisory firms to conduct reviews of these functions and specific remediation issues. It is our expectation that the regulators provide open and frank assessments including any concerns when they meet with our boards and senior executives.

109. AMP believes that relevant boards and senior management need to review all risk, compliance and remediation issues as a priority in consultation with the regulators. This includes assessing whether appropriate resources have been allocated to deal with the identified issues as well as ensuring that systems and controls are adequate to prevent future non-compliance with the regulatory requirements. The quality of risk and compliance functions should not be measured simply by employee numbers. Rather, it is a matter of how these functions are embedded within the overall culture of the organisation.

Question 37

Should there be greater consequences for financial services entities that fail to design, maintain and resource their compliance systems in a way that ensures they are effective in:

37.1 preventing breaches of financial services laws and other regulatory obligations; and

37.2 ensuring that any breaches that do occur are remedied in a timely fashion?

AMP Response

110. AMP does not consider that, despite best endeavours, it is possible to have a compliance system that ensures prevention of all breaches and as such there must be an effective system in place to ensure breaches are identified and remediated. There are numerous provisions that the regulators can use to address failures to ensure that systems are effective to prevent breaches of the laws, and to encourage timely remediation.

111. In some cases, the complexities of the laws and the ability to deal with numerous legacy systems has impeded the identification of significant breaches and their remediation.

112. AMP acknowledges that more could have been invested in systems and controls to minimise the risk of breaches of the financial services laws. In some cases, our existing systems have also contributed to a delay in customer remediation. AMP accepts that more needs to be done to embed compliance in our systems to help with our obligations to comply with the financial services laws.

113. Where we detect non-compliance, we attempt to remediate, in consultation with the relevant regulator, in a timely manner. Often the complex nature of the non-compliance contributes to the time taken to fully review each affected customer to ensure that they are put back into the position they would have been in if full compliance had taken place. This is particularly the case in insurance where it is often not a matter of simple monetary compensation. All circumstances need to be considered, for example whether the insurance advice was appropriate, and if not, providing appropriate advice and insurance cover.

Question 38

When a financial services entity identifies that it has a culture that does not adequately value compliance, what should it do? What role, if any, can financial services laws and regulators play in shaping the culture of financial services entities? What role should they play?

AMP Response

114. The Royal Commission has identified culture as being a major issue within the financial services sector; too often, and despite "tone from the top", culture has not adequately or consistently valued compliance. More needs to be done. But there remains a question as to whether additional legislation or regulation would fix that problem. Cultural change is hard to achieve – it involves the use of multiple levers including leadership, training, developing appropriate incentives as well as withholding relevant incentives, disciplinary action and regulatory intervention, in some cases across a group that operates a franchise or partially owned network alongside an employed network.

115. Financial services companies should be striving to ensure they do business in a compliant and ethical manner which will be in the best interests of our customers, staff and shareholders.

116. AMP believes that regulators have an ability to influence elements of the compliance culture of financial services organisations, through enforcement and the setting of regulations that focus on areas such as executive remuneration and system adequacy and in general through the setting and communication of prudential expectations. However, it is not possible to regulate culture - this must be driven from within the organisation.

Question 39

Are there any recommendations in the "ASIC Enforcement Review Taskforce Report", published by the Australian Government in December 2017, that should be supplemented or modified??

117. AMP supported the Taskforce Report. AMP advocated through the FSC that the breach reporting regime should be strengthened to ensure that individual adviser breaches are reportable to ASIC. AMP also supports ASIC having the ability to ban or suspend individuals from managing financial services organisations.